
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: November 9, 2007

IBA Report Number: 07-109

City Council Date: November 13, 2007

Item Number: 330

Third Amendment to Disclosure Counsel Agreement

OVERVIEW

The City received a report on disclosure requirements from Vinson & Elkins LLP on September 16, 2004. The report recommended that the City retain a law firm to serve as the City's general disclosure counsel to provide continuity in the City's disclosure materials. In March 2004, the City selected the law firm of Hawkins, Delafield & Wood LLP (Hawkins) to serve as the City's general disclosure counsel.

The City Council is being asked to adopt an ordinance that will authorize an additional \$500,000 in a Third Amended and Restated Agreement with Hawkins. The Office of the City Attorney has provided an accompanying ordinance that would appropriate \$369,500 of the additional \$500,000 from the City's General Fund Unallocated (or Unappropriated) Reserve, with the remaining funds to be appropriated from City enterprise funds benefiting from general disclosure counsel services. This report briefly discusses the evolution of the contract and comments on the requested appropriation.

FISCAL/POLICY DISCUSSION

Evolution of the Agreement with Hawkins

The City initiated an agreement (Agreement) with Hawkins "for legal services related to general disclosure and continuing disclosure matters" on May 11, 2004. The initial agreement was for an amount not to exceed \$100,000 and contained a broad 14-item scope of services section focusing on City disclosure matters. Citing a need for

additional general disclosure counsel services from Hawkins, the City executed a First Amendment to the Agreement with Hawkins on December 2, 2004, adding an additional \$150,000 to the Agreement. Each of the aforementioned agreements was processed at the request of the City Attorney by City Manager Action.

On March 8, 2005, the City Council approved Resolution R-300206, authorizing the City Manager to execute a Second Amended and Restated Agreement with Hawkins for general disclosure counsel services. This amendment increased the Agreement by another \$500,000. The specified term of the Second Amended Agreement was from April 1, 2004 through December 1, 2005.

The Office of the City Attorney is currently requesting that the City Council adopt an ordinance that would appropriate an additional \$500,000 for Hawkins and authorize a Third Amended and Restated Agreement. This amendment would bring the total authorized compensation for Hawkins to \$1,250,000 since the inception of the initial Agreement. There is no specified term for the proposed Third Amended Agreement and no discussion of the anticipated Agreement duration in the staff report.

In discussing the need for the proposed Third Amended Agreement, the Office of the City Attorney has informed the IBA that additional general disclosure counsel services are required and previously appropriated funds for the Agreement have been exhausted. The Second Amended and Restated Agreement expired on December 1, 2005. Additionally, the IBA has been informed that the City Attorney has been unable to pay approximately \$158,000 worth of invoices dating back to 2006.

Requested Reserve Fund Appropriation

The City Council is being asked to authorize an ordinance that would appropriate \$369,500 of the additional \$500,000 for the proposed Third Amended Agreement from the City's General Fund Unappropriated Reserve. The IBA believes such an appropriation will require an amendment to the Appropriation Ordinance before funds can be withdrawn from the Unappropriated Reserve. We recommend that such an appropriation is better made from the Appropriated Reserve specifically established for unanticipated annual expenses (by Item 52 on November 13th docket, if approved).

The IBA has shared this recommendation with the Office of the City Attorney and suggested that they consider developing a resolution that would alternatively authorize the requested appropriation from the Appropriated Reserve. The Office of the City Attorney has indicated that they will develop such a resolution. If the City Council decides to authorize the Third Amended Agreement, the IBA recommends the City Council adopt the resolution brought forward by the Office of the City Attorney to facilitate an appropriation from the Appropriated Reserve.

CONCLUSION

The IBA believes that the City needs continued general disclosure counsel services and that the requested Third Amended Agreement should be approved. We recommend that the Third Amended Agreement is appropriately funded from the Appropriated Reserve that has been established for unanticipated annual expenses. The IBA is concerned, however, that such an important contract has been allowed to expire for an extended period of time (since December 2005) and that services have been received in excess of appropriated funds.

In the future, general disclosure counsel services should be thoughtfully contemplated on a regular basis and accounted for in the annual budget process so as not to unnecessarily deplete appropriated reserves. The IBA understands that disclosure counsel services will occasionally be unanticipated; however, in this instance, the Agreement has been long expired and services have been rendered well beyond appropriated levels. If the Third Amended Agreement is approved, we recommend that invoices be immediately brought current and the City Council be periodically apprised of the status of the Disclosure Counsel Agreement going forward. Finally, the IBA recommends that the City competitively bid disclosure counsel services well before this new Agreement expires.

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